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11 Attorneys for Defendants  
12 SEARS HOLDINGS CORPORATION and SEARS,  
ROEBUCK AND CO.

13  
14                   UNITED STATES DISTRICT COURT  
15                   CENTRAL DISTRICT OF CALIFORNIA

16 RAMON PEREZ, as an individual and  
17 on behalf of all others similarly situated,

18                   Plaintiff,

19                   v.  
20                   SEARS ROEBUCK AND CO., a New  
21                   York corporation, SEARS HOLDING  
CORP., a Delaware corporation, and  
DOES 1 through 100, inclusive,

22                   Defendants.

Case No. **CV11-03527** DSF(PRW)  
CLASS ACTION

**DEFENDANTS SEARS,  
ROEBUCK AND CO. AND  
SEARS HOLDINGS  
CORPORATION'S NOTICE OF  
REMOVAL**

DEFENDANTS SEARS, ROEBUCK AND CO.  
AND SEARS HOLDINGS CORPORATION'S  
NOTICE OF REMOVAL

1           TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL  
2 DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HIS COUNSEL OF  
3 RECORD:

4           PLEASE TAKE NOTICE that Defendants Sears Holdings Corporation and  
5 Sears, Roebuck and Co. ("Defendants") file this Notice of Removal pursuant to 28  
6 U.S.C. §§ 1332(d), 1441, 1446 and 1453 to effect the removal of the above-  
7 captioned action, which was commenced in the Superior Court of the State of  
8 California in and for the County of Santa Barbara, and states that the removal is  
9 proper for the reasons stated below.

10           **BACKGROUND**

11           1. On March 14, 2011, Plaintiff Ramon Perez, individually and  
12 purportedly on behalf of all others similarly situated, filed a Complaint in the  
13 Superior Court of California for the County of Santa Barbara, entitled "Ramon  
14 Perez, as an individual and on behalf of all other similarly situated, Plaintiff, v.  
15 Sears Roebuck & Co., a New York corporation, Sears Holdings Corporation, a  
16 Delaware corporation , and Does 1 through 100, inclusive, Defendants," No.  
17 1379818 (the "Action"). The allegations of the Complaint in the Action are  
18 incorporated by reference in this Notice of Removal without necessarily admitting  
19 any of them.

20           2. The Complaint purports to assert five class-wide claims for  
21 relief against all defendants in the case, alleging causes of action based upon the  
22 plaintiff's employment relationship. The Complaint alleges class-wide causes of  
23 action for violations of the California Labor Code and unfair business practices  
24 statutes of California Business and Professions Code section 17200 *et seq.*, and  
25 seeks relief in the form of allegedly unpaid overtime wages, meal and rest break  
26 premium pay, penalties under the Labor Code, declaratory relief, and statutory  
27 attorneys' fees and interest.

1           3. The Complaint names Defendant Sears Holdings Corporation, a  
 2 non-California corporation with its principal place of business in Illinois, and  
 3 Defendant Sears, Roebuck and Co., also a non-California corporation with its  
 4 principal place of business in Illinois. Defendants are informed and believe there  
 5 have been no other defendants named in this case.

6           4. Defendants' agent for service of process was served with the  
 7 Summons and Complaint and other papers on March 24, 2011. The Summons and  
 8 Complaint are attached hereto together with all other pleadings, process and orders  
 9 served on Defendants as **Exhibit A**. This Notice of Removal is timely as it is filed  
 10 within thirty days of the first receipt by a defendant of a copy of the Summons and  
 11 Complaint in this matter. 28 U.S.C. § 1446(b).

#### **CLASS ACTION FAIRNESS ACT**

12           5. Defendants remove this action based upon the Class Action  
 13 Fairness Act of 2005 ("CAFA"), codified in 28 U.S.C. § 1332(d). This Court has  
 14 original jurisdiction of this action under § 1332(d)(2). As set forth below, this  
 15 action is removable pursuant to 28 U.S.C. § 1441(a) as it is a class action in which  
 16 at least one class member is a citizen of a state different from that of any one  
 17 defendant, the proposed class exceeds 100 members, and the amount in controversy  
 18 exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2)(A).  
 19 Further, no defendant identified in the Complaint is a state, officer of a state, or a  
 20 governmental agency. 28 U.S.C. § 1332(d)(5).

#### **Diversity of Citizenship**

22           6. Plaintiff's Citizenship. Plaintiff alleges that he has resided  
 23 within the state of California at all times relevant to the matters set forth in the  
 24 Complaint. Complaint ¶ 5. For diversity purposes, a person is a "citizen" of the  
 25 state in which he or she is domiciled. *See Kantor v. Wellesley Galleries, Ltd.*, 704  
 26 F.2d 1088, 1090 (9th Cir. 1983). Residence is *prima facie* evidence of domicile.  
 27  
 28

1       See *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994).

2 Defendants therefore allege that Plaintiff is a citizen of California. Complaint ¶ 5.

3              7.       Citizenship Of Members Of Proposed Plaintiff Class. Plaintiff  
4       alleges that the proposed class consists only of persons formerly employed within  
5       the State of California. Complaint ¶ 7. On that basis, Defendants allege that at  
6       least two-thirds of the persons who make up the proposed class are citizens of the  
7       State of California.

8              8.       Defendants' Citizenship. Defendant Sears Holdings  
9       Corporation is a citizen of Delaware and Illinois. Defendant Sears, Roebuck and  
10      Co. is a citizen of New York and Illinois. A corporation “shall be deemed a citizen  
11      of any State by which it has been incorporated and of the State where it has its  
12      principal place of business.” 28 U.S.C. § 1332(c). Sears Holdings Corporation is  
13      incorporated under the laws of the State of Delaware, and has its principal place of  
14      business in Hoffman Estates, Illinois, where it is headquartered. Sears, Roebuck  
15      and Co. is incorporated under the laws of the State of New York, and has its  
16      principal place of business in Hoffman Estates, Illinois, where it is headquartered.

17              9.       Doe Defendants' Citizenship. The citizenship of fictitious  
18       defendants is disregarded for purposes of establishing removal jurisdiction under  
19       28 U.S.C. § 1332. See 28 U.S.C. § 1441(a); see also *Bryant v. Ford Motor Co.*,  
20       886 F.2d 1526 (9th Cir. 1989), cert. denied, 493 U.S. 1076 (1990).

21              10.      Size of Class. The Complaint defines a single class and one  
22       subclass. The class includes “[a]ll persons employed by defendant during the Class  
23       Period as ‘Store Managers’ or ‘General Managers’ and similar positions, at any of  
24       Defendants’ full line retail stores” Complaint ¶ 19. Defendants assert that there are  
25       more than 100 individuals who qualify as potential class members during the four-  
26       year period alleged. Defendants presently estimate that the number of current and  
27       former Store Managers employed by Sears encompassed by the Complaint during  
28

1 the alleged class period is greater than 150. Declaration of Robert G. Springhorn  
2 (“Springhorn Decl.”) ¶ 3.

## **Amount in Controversy**

4           11. The alleged amount in controversy in this class action exceeds,  
5 in the aggregate, \$5,000,000, exclusive of interest and costs. Defendants deny  
6 plaintiff's claims in their entirety and assert that plaintiff's claims are not amenable  
7 to class treatment, but provide the following analysis of potential damages (without  
8 admitting liability) in order to demonstrate that plaintiff's Complaint puts a  
9 sufficient amount "in controversy" to warrant removal under 28 U.S.C. § 1332(d).  
10 The Complaint seeks payment of allegedly unpaid regular and overtime wages over  
11 a four-year period, premium pay for missed meal and rest periods, and damages for  
12 allegedly inaccurate wage statements at the amounts set by Labor Code § 226(a),  
13 which sets forth maximum damages of \$4,000 per employee. The Complaint also  
14 seeks payment of waiting time penalties under California Labor Code § 203, which  
15 provides that wages shall continue at their regular rate for a period of up to 30 days  
16 if all concededly due wages are not paid at the time of termination.

17           12. When the amount in controversy is not readily apparent from a  
18 complaint, “the court may consider facts in the removal petition” to determine the  
19 potential damages at issue. *Kroske v. US Bank Corp.*, 432 F.3d 976, 980 (9th Cir.  
20 2005) (*quoting Singerv. State Farm Mut. Ins. Co.*, 116 F.3d 373, 377 (9th Cir.  
21 1997)). Where the complaint is silent, a defendant need only satisfy the amount in  
22 controversy by a preponderance of the evidence. *Singer*, 116 F.3d at 376. Thus,  
23 Defendants in this case are only required to establish that it is more likely than not  
24 that the amount in controversy exceeds \$5,000,000. Statutory penalties may be  
25 considered by the Court when determining the amount in controversy. *See*  
26 *Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th Cir. 2000).  
27 The Court should also include requests for attorneys’ fees in determining the

1 amount in controversy. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56  
 2 (9th Cir. 1998).

3           13. The potential damages, penalties and restitution plaintiff seeks  
 4 in this action easily exceed \$5,000,000, exclusive of interest and costs. Defendants'  
 5 records show that Defendant Sears, Roebuck and Co. alone employed 161 Store  
 6 Managers during the proposed class period. Springhorn Decl. ¶ 3. Accounting for  
 7 a leave of absence, Plaintiff was employed by Defendant Sears, Roebuck and Co.  
 8 for approximately 143 workweeks, and his average hourly rate of pay was \$35.03.  
 9 Springhorn Decl. ¶ 4.

10           14. Plaintiff's first cause of action is for failure to pay overtime  
 11 wages. Complaint at ¶¶ 27-39. Based on the Complaint's allegation that Store  
 12 Managers were misclassified as exempt employees, it is expected that plaintiff will  
 13 claim to have worked some (as yet unidentified) number of overtime hours each  
 14 week for which he should have been paid. Assuming that plaintiff claims he was  
 15 owed for just one (1) overtime hour each week (a conservative estimate as to the  
 16 number of hours plaintiff will likely claim), his individual damages for the first  
 17 cause of action would be \$7,513.93 (1 OT Hour at \$52.54 per hour (1.5 \* \$35.03)  
 18 multiplied by 143 weeks). Assuming (as alleged in the Complaint) that plaintiff's  
 19 claims are typical of the class and that at least one hour of overtime per week is at  
 20 issue, the amount in controversy on the first cause of action alone would be  
 21 **\$1,209,742.73**. If plaintiff claims that he and proposed class members worked 5  
 22 hours of overtime per week, then the amount in controversy on the first cause of  
 23 action alone would be **\$6,048,713.65** (5 OT hours at \$52.54 \* 143 weeks \* 161  
 24 class members). It is not uncommon for plaintiffs in misclassification cases such as  
 25 this to assert that members of the proposed class worked 10 or even as many as 20  
 26 hours of overtime per week.

27           15. Plaintiff's second cause of action for failure to provide meal and  
 28 rest breaks alleges that plaintiff and members of the proposed class were unlawfully

1 denied meal and rest breaks, and were not paid an hour's wages in lieu thereof.  
 2 Assuming Plaintiff contends one non-compliant meal and/or rest period each day  
 3 during a five-day workweek, plaintiff's individual potential damages over the 143  
 4 workweeks that he was employed would be \$25,046.45 ( $5 * \$35.03 * 143$  weeks).  
 5 If plaintiff's claim is assumed to be typical of the class, the amount in controversy  
 6 for the meal and rest break cause of action would be **\$4,032,478.45**.

7         16. Plaintiff's third cause of action for late payment of final wages  
 8 under California Labor Code § 203 alleges that class members who are no longer  
 9 employed by the defendants were not paid all wages due upon termination. Labor  
 10 Code § 203 provides for 30 days' wages as a penalty for late final payment of owed  
 11 wages. Of the 161 Store Managers employed by Sears, Roebuck and Co. in  
 12 California during the proposed class period, 72 are no longer employed.  
 13 Springhorn Decl. ¶ 3. Thirty days of wages for the plaintiff would be \$8,406.54.  
 14 Assuming that plaintiff's Labor Code § 203 penalties are typical of those of the  
 15 class, the total amount in controversy on plaintiff's third cause of action would be  
 16 **\$605,270.88**.

17         17. Plaintiff's fourth cause of action for failure to issue accurate  
 18 itemized wage statements carries a maximum penalty of \$4,000 per employee. If  
 19 the 161 Store Managers at Sears, Roebuck and Co. were entitled to the maximum  
 20 penalties provided by Labor Code § 226(a), the amount in controversy on this claim  
 21 alone would be **\$644,000**.

22         18. As the calculations above demonstrate, there is well over  
 23 \$5,000,000 in controversy in this action even using the conservative amounts  
 24 discussed above: \$1,209,742.73 (OT wages) + 4,032,478.45 (meal & rest breaks) +  
 25 605,270.88 (Labor Code § 203 late payment penalties) + \$644,000 (wage statement  
 26 claim) = **\$6,491,492.06**). This amount is satisfied even without addressing the  
 27 issue of potential attorneys' fees, which are provided for by statute and in the Ninth  
 28

1 Circuit typically are 25% of any judgment in favor of the plaintiff. CAFA's  
 2 amount-in-controversy requirement is easily satisfied.

3                   **No Bases for Rejecting or Declining Jurisdiction Exist**

4                   19. There are no bases for this Court to reject or decline jurisdiction  
 5 as set out in 28 U.S.C. § 1332(d). Further, as set out above, no named defendant is  
 6 a citizen of California; thus 28 U.S.C. §§ 1332(d)(3) and (4)(A)(i)(I) are  
 7 inapplicable.

8                   **DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332(a)**

9                   20. This Court also has original jurisdiction over this civil action  
 10 (including Plaintiff Perez's claims on an individual basis) against Defendant  
 11 pursuant to 28 U.S.C. section 1332 (a). This action may therefore be removed by  
 12 Defendant pursuant to 28 U.S.C. § 1441. As to Plaintiff Ramon's individual  
 13 claims, the amount in controversy exceeds the sum or value of \$75,000, exclusive  
 14 of interest and costs, and the claims are between citizens of different states.

15                   21. Diverse Citizenship: As mentioned above, Plaintiff is and was  
 16 at the time of filing the Complaint, and was at all times intervening a citizen and  
 17 resident of the State of California. In addition, Defendants Sears Holdings Corp.  
 18 and Sears, Roebuck and Co. were not citizens of California. Accordingly, Plaintiff  
 19 is a citizen of a state different than that of Defendants.

20                   22. Amount in Controversy: Plaintiff's first cause of action is for  
 21 unpaid overtime. Assuming that plaintiff claims he was owed for just five (5)  
 22 overtime hours each week (a conservative estimate of what Plaintiff will likely  
 23 claim), his individual damages for the first cause of action would be **\$37,566.10** (5  
 24 OT Hours at plaintiff's overtime rate of \$52.54 per hour [1.5 \* \$35.03] multiplied  
 25 by 143 weeks). Plaintiff's second cause of action is for failure to allow and pay for  
 26 meal and periods. Assuming one non-compliant meal and/or rest period each day  
 27 during a five-day workweek, plaintiff's individual potential damages over the 143  
 28 workweeks that he was employed would be **\$25,046.45** (5 hours \* \$35.03 \* 143

1 weeks). Plaintiff's third cause of action for late payment of final wages under  
2 California Labor Code § 203. Thirty days of wages for the plaintiff would be  
3 **\$8,406.54**. Plaintiff's fourth cause of action for failure to issue accurate itemized  
4 wage statements carries a maximum penalty of **\$4,000** per employee. Therefore,  
5 plaintiff's amount in controversy, under a conservative estimate, is at least  
6 **\$75,019.09**, not including any attorney's fees that are properly included when  
7 determining the amount in controversy.

## **VENUE**

9                   23.   Venue lies in the Central District of California pursuant to 28  
10 U.S.C. §§ 1441(a), 1446(a), and 84(c)(2). This action was originally brought in the  
11 Superior Court of the State of California, County of Santa Barbara, which is  
12 embraced by the Central District of California

## **NOTICE OF REMOVAL**

14                   24. This Notice of Removal shall be served promptly on the plaintiff  
15 Ramon Perez and filed with the Clerk of the Superior Court of the State of  
16 California in and for the County of Santa Barbara.

17               25. In compliance with 28 U.S.C. § 1446(a), attached hereto as  
18 **Exhibit A** are copies of all state-court papers served herein, including the summons  
19 and Complaint.

20                   26. WHEREFORE, Defendants prays that this civil action be  
21 removed from the Superior Court of the State of California, County of Santa  
22 Barbara to the United States District Court of the Central District of California.

Dated: April 25, 2011

LYNNE C. HERMLE  
JOSEPH C. LIBURT  
CHRISTIAN N. BROWN  
Orrick, Herrington & Sutcliffe LLP

By: *Christian Bm*  
CHRISTIAN N. BROWN  
Attorneys for Defendants

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# **EXHIBIT A**

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Stanley D. Saltzman, Esq. (SBN 90058) Kiley L. Grombacher, Esq. (SBN 245960) MARLIN & SALTZMAN, LLP 29229 Canwood Street, Suite 208 Agoura Hills, CA 91301 TELEPHONE NO: (818) 991-8080 FAX NO: (818) 991-8081 ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA STREET ADDRESS: 1100 Anacapa Street MAILING ADDRESS: 1100 Anacapa Street CITY AND ZIP CODE: Santa Barbara, CA 93121 BRANCH NAME: ANACAPA BRANCH		<b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA BARBARA <b>MAR 14 2011</b> GARY M. BLAIR, Executive Officer BY <i>Milee A. Jay</i> Milee A. Jay, Deputy Clerk
CASE NAME: PEREZ v. SEARS		CASE NUMBER: <b>1379818</b>
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded exceeds \$25,000)      (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case  is  not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- Large number of separately represented parties
  - Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
  - Substantial amount of documentary evidence
  - Large number of witnesses
  - Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
  - Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify): five (5)

5. This case  is  not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 9, 2011

*Kiley L. Grombacher, Esq.*

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET****CM-010**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties In Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES****Auto Tort**

Auto (22)—Personal Injury/Property

Damage/Wrongful Death

Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

Asbestos (04)

Asbestos Property Damage

Asbestos Personal Injury/

Wrongful Death

Product Liability (*not asbestos or toxic/environmental*) (24)

Medical Malpractice (45)

Medical Malpractice—

Physicians &amp; Surgeons

Other Professional Health Care

Malpractice

Other PI/PD/WD (23)

Premises Liability (e.g., slip and fall)

Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)

Intentional Infliction of

Emotional Distress

Negligent Infliction of

Emotional Distress

Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

Business Tort/Unfair Business Practice (07)

Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)

Defamation (e.g., slander, libel) (13)

Fraud (16)

Intellectual Property (19)

Professional Negligence (25)

Legal Malpractice

Other Professional Malpractice (*not medical or legal*)**Other Non-PI/PD/WD Tort (35)**

Employment

Wrongful Termination (36)

Other Employment (15)

**Contract**

Breach of Contract/Warranty (06)

Breach of Rental/Lease

Contract (*not unlawful detainer or wrongful eviction*)Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)

Negligent Breach of Contract/

Warranty

Other Breach of Contract/Warranty

Collections (e.g., money owed, open book accounts) (09)

Collection Case—Seller Plaintiff

Other Promissory Note/Collections Case

Insurance Coverage (*not provisionally complex*) (18)

Auto Subrogation

Other Coverage

Other Contract (37)

Contractual Fraud

Other Contract Dispute

**Real Property**

Eminent Domain/Inverse Condemnation (14)

Wrongful Eviction (33)

Other Real Property (e.g., quiet title) (26)

Writ of Possession of Real Property

Mortgage Foreclosure

Quiet Title

Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)**Unlawful Detainer**

Commercial (31)

Residential (32)

Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)**Judicial Review**

Asset Forfeiture (05)

Petition Re: Arbitration Award (11)

Writ of Mandate (02)

Writ—Administrative Mandamus

Writ—Mandamus on Limited Court

Case Matter

Writ—Other Limited Court Case

Review

Other Judicial Review (39)

Review of Health Officer Order

Notice of Appeal—Labor

Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

Antitrust/Trade Regulation (03)

Construction Defect (10)

Claims Involving Mass Tort (40)

Securities Litigation (28)

Environmental/Toxic Tort (30)

Insurance Coverage Claims

(*arising from provisionally complex case type listed above*) (41)**Enforcement of Judgment**

Enforcement of Judgment (20)

Abstract of Judgment (Out of County)

Confession of Judgment (*non-domestic relations*)

Sister State Judgment

Administrative Agency Award (*not unpaid taxes*)

Petition/Certification of Entry of Judgment on Unpaid Taxes

Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

RICO (27)

Other Complaint (*not specified above*) (42)

Declaratory Relief Only

Injunctive Relief Only (*non-harassment*)

Mechanics Lien

Other Commercial Complaint Case (*non-tort/non-complex*)Other Civil Complaint (*non-tort/non-complex*)**Miscellaneous Civil Petition**

Partnership and Corporate Governance (21)

Other Petition (*not specified above*) (43)

Civil Harassment

Workplace Violence

Elder/Dependent Adult Abuse

Election Contest

Petition for Name Change

Petition for Relief from Late Claim

Other Civil Petition

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:** SEARS ROEBUCK AND CO., a New York  
(AVISO AL DEMANDADO): corporation, SEARS HOLDING CORP.,  
a Delaware corporation, and DOES 1 through 100,  
inclusive

DB 3/24/11  
2/28

**YOU ARE BEING SUED BY PLAINTIFF:** RAMON PEREZ, as an  
(LO ESTÁ DEMANDANDO EL DEMANDANTE): individual and on  
behalf of all others similarly situated

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

MAR 14 2011

GARY M. BLAIR, Executive Officer  
BY *Marylee A. Jay*  
Merilee A. Jay, Deputy Clerk

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/sefhelp](http://www.courtinfo.ca.gov/sefhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/sefhelp](http://www.courtinfo.ca.gov/sefhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. /AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SANTA BARBARA COUNTY SUPERIOR COURT  
1100 Anacapa Street  
1100 Anacapa Street  
Santa Barbara, CA 93121

CASE NUMBER:  
(Número del Caso):

1379818

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Stanley D. Saltzman, Esq. (SBN 90058) (818) 991-8080 (818) 991-8081  
Kiley L. Grombacher, Esq. (SBN 245960) GARY M. BLAIR, EXECUTIVE OFFICER  
MARLIN & SALTZMAN, LLP

29229 Canwood Street, Suite 208, Agoura Hills, CA, 91301

DATE: MAR 14 2011 Clerk, by MERILEE A. JAY Deputy  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):

under:  CCP 416.10 (corporation)

CCP 416.60 (minor)

CCP 416.20 (defunct corporation)

CCP 416.70 (conservatee)

CCP 416.40 (association or partnership)

CCP 416.90 (authorized person)

other (specify):

4.  by personal delivery on (date):

**MARLIN & SALTZMAN, LLP**  
Stanley D. Saltzman, Esq. (SBN 090058)  
Marcus J. Bradley, Esq. (SBN 174156)  
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**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

MAR 14 2011

GARY M. BLAIR, Executive Officer  
BY Melroe A. Jay  
Melroe A. Jay, Deputy Clerk

**UNITED EMPLOYEES LAW GROUP, PC**  
Walter Haines, Esq. (SBN 71075)  
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Long Beach, California 90802  
Telephone: (888) 474-7242  
Facsimile: (866) 435-7471

## 9 | Attorneys for Plaintiff and the Proposed Plaintiff Class

10

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA**

13 RAMON PEREZ, as an individual and on behalf of all others similarly situated,

CASE NO. 1379818

## **CLASS ACTION COMPLAINT FOR:**

1. Failure to Pay Overtime Wages (*Lab. Code* § 1194);
  2. Failure to Allow and Pay for Meal and Rest Periods (*Lab. Code* §§ 200, 226.7, 512);
  3. Failure to Pay Compensation Upon Discharge (*Lab. Code* §§ 201-203);
  4. Failure to Provide Proper Wage Statement (*Lab. Code* § 226);
  5. Violation of California Bus. & Prof. Code §§ 17200-17208);

**DEMAND FOR JURY TRIAL**

23 RAMON PEREZ ("Plaintiff"), individually and behalf of all others similarly situated, alleges  
24 the following against SEARS ROEBUCK AND CO., SEARS HOLDING CORP., and DOES 1  
25 through 100, (hereinafter sometimes collectively referred to as "Defendants").

## **INTRODUCTION**

27. 1. This matter is brought as a class action pursuant to California *Code of Civil Procedure*  
28. § 382, on behalf of Plaintiff and the Plaintiff Class, which is comprised of all persons who are, or have

1 been employed by defendants as Managers in any of Defendants' full-line California stores during the  
2 Class Period, which runs from December 7, 2006, to the date judgment is rendered herein.

3       2. Plaintiff seeks relief on behalf of himself and the Plaintiff Class based on Defendants'  
4 (a) failure to pay overtime compensation in violation of *Labor Code* § 1194 and the orders and  
5 standards promulgated by the California Division of Labor Standards Enforcement and the California  
6 Industrial Commission, (b) failure to allow and pay for meal and rest breaks pursuant to *Labor Code*  
7 §§ 220, 226.7 and 512, (c), failure to pay compensation at the time of termination in violation of *Labor*  
8 *Code* §§ 201-203, (d) failure to furnish Plaintiff and the Plaintiff Class with accurate itemized  
9 statements upon payment of wages as required by *Labor Code* § 226, and (e) violation of California's  
10 unfair competition laws (*Business & Professions Code* § 17200).

11       3. Plaintiff's claims are based on the erroneous misclassification of Plaintiff and members  
12 of the Plaintiff Class as exempt from California's wage and hour laws which require defendants to pay  
13 overtime compensation, and provide its employees proper, statutorily required meal and rest periods.  
14 In fact, Plaintiff and members of the Plaintiff Class performed non-exempt job duties, and thus are,  
15 and were entitled to, but denied overtime compensation, and proper meal and rest periods.

## **JURISDICTION AND VENUE**

17       4.     Venue is proper in this court because Defendant maintains offices and transact business  
18 within the jurisdiction of this Court, because the conduct alleged herein which gives rise to the claims  
19 asserted occurred within the jurisdiction of this Court. Specifically, plaintiff Ramon Perez worked for  
20 Defendant within Santa Barbara County, and the wages herein claimed were earned by him in Santa  
21 Barbara County.

## THE PARTIES

23       5. At all times mentioned herein Plaintiff Ramon Perez was, and now is, a resident of the  
24 County of Ventura, State of California.

25       6. Plaintiff was employed by Defendants as a Manager of Defendant's Sears store in Santa  
26 Barbara, California, from September, 2008, to July, 2010.

27       7. The members of the proposed class are likewise current and former employees of  
28 Defendant, employed by defendant within the state of California as Managers.

1       8.     Defendant Sears Roebuck and Company is a New York corporation with a principal  
2 place of business in Illinois. Sears Roebuck and Company does business in the State of California,  
3 including the County of Santa Barbara. Defendant conducts business under the name of Sears  
4 throughout the State of California, and employs, and has employed individuals in the position of Store  
5 Manager at its full line retail stores.

6        9.      Defendant Sears Holding Corp. is a Delaware corporation with a principal place of  
7 business in Illinois. Sears Holding Corp. does business in the State of California, including the County  
8 of Santa Barbara. Defendant conducts business under the name of Sears throughout the State of  
9 California, and employs, and has employed individuals in the position of Store Manager at its full line  
10 retail stores.

11        10. Plaintiff is ignorant of the true names, capacities, relationships and extent of  
12 participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 100,  
13 inclusive, but on information and belief alleges that said Defendants are in some manner legally  
14 responsible for the unlawful actions, policies, and practices alleged herein, and therefore sues such  
15 Defendants by such fictitious names. Plaintiff is informed and believes, and thereon alleges that each  
16 Defendant named herein was the agent of the other, and the agent of all Defendants. Plaintiff is further  
17 informed and believes, and thereon alleges, that each defendant was acting within the course and scope  
18 of said agency at all relevant times herein, for the benefit of themselves, each other, and the other  
19 Defendants, and that each Defendant's actions as alleged herein was authorized and ratified by the  
20 other Defendants.

## **FACTUAL ALLEGATIONS**

22        11. Throughout the Class Period, as the same is defined herein, Plaintiff and each member  
23 of the Plaintiff Class was an exempt employee, performing job duties which are classified as non-  
24 exempt, and thus covered by one or more Industrial Welfare Commission ("IWC") Wage Orders,  
25 including, but not limited to, Wage Order Nos. 7-1989, 7-1998, 7-200, 7-2001 ("Wage Orders"), as  
26 well as Cal. Code Regs., tit. 8, § 11070, and *Labor Code* § 510, and/or other applicable wage orders,  
27 regulations and statutes.

28 | / / /

1           12. Specifically, the primary job duties performed by Plaintiff and members of the Plaintiff  
2 Class were, and are maintaining the inventory and sales floor, cleaning the store, working the cash  
3 registers, sales, and assisting customers. Plaintiff and the members of the Plaintiff Class spent the  
4 majority of their time performing these non-exempt job duties, as opposed to job duties classified as  
5 exempt under California law.

6           13. Plaintiff and members of the Plaintiff Class are not involved in managing Defendant's  
7 enterprise, and are not subject to any exemptions for executive, administrative or professional  
8 employees. Defendant was therefore obligated to pay Plaintiff and members of the Plaintiff Class  
9 compensation for overtime, and to provide them the statutorily mandated meal and rest periods, and/or  
10 to compensate Plaintiffs therefore. However, Defendant improperly classified Plaintiff and members  
11 of the Plaintiff Class as exempt employees, exempt from the wage and hour provisions identified  
12 above.

13           14. Plaintiff and each member of the Plaintiff Class routinely worked in excess of the  
14 maximum regular rate hours established by the IWC in the above-described Wage Orders, regulations,  
15 and statutes, which entitled them to overtime compensation as set by law. Since at least November 15,  
16 2006, and continuing to the present, Defendant has had a consistent policy of failing to pay wages  
17 and/or overtime to Plaintiff and members of the Plaintiff Class for all work performed and/or work  
18 over eight (8) hours per day or forty (40) per week. Relying upon, and consistent with Defendant's  
19 standard policy, practice and procedure of classifying Plaintiff and each member of the Plaintiff Class  
20 as exempt employees, Defendant failed and refused to compensate Plaintiff and members of the  
21 Plaintiff Class for overtime worked by them.

22           15. Plaintiff and each member of the Plaintiff Class were routinely not allowed meal and  
23 rest breaks as required by the IWC in the above-described Wage Orders, regulations, and statutes.  
24 Since at least December 7, 2006, and continuing to the present, Defendant has had a consistent policy  
25 of failing to provide Plaintiff and members of the Plaintiff Class statutorily required meal and rest  
26 periods. Relying upon, and consistent with Defendant's standard policy, practice and procedure of  
27 classifying Plaintiff and each member of the Plaintiff Class as exempt employees, Defendant failed  
28

1 and refused to allow Plaintiff and members of the Plaintiff Class statutorily required meal and rest  
2 periods.

3       16. Plaintiff and each member of the Plaintiff Class were routinely provided wage  
4 statements which do not truly and accurately reflect the number of hours worked by them, or the wages  
5 due to them, specifically including but not limited to, failing to reflect hours worked overtime, and  
6 overtime wages due, and compensation due for missed meal and rest breaks. Since at least  
7 November 15, 2006, and continuing to the present, Defendant has had a consistent policy of failing to  
8 provide Plaintiff and members of the Plaintiff Class true and accurate wage statements upon payment  
9 of wages, as required by California *Labor Code* § 226(a).

10       17. Plaintiff and each member of Sub-Class No. 1 (hereinafter sometimes referred to as the  
11 "Terminated Sub-Class"), whose employment with Defendant was terminated during the class period,  
12 were routinely not paid, upon termination, all wages due to them, in violation of California *Labor*  
13 *Code* section 201-203. Specifically, Plaintiff and members of the Terminated Sub-Class were not paid  
14 for overtime, nor were they compensated for missed meal and rest breaks. Since at least November 15,  
15 2006, and continuing to the present, Defendant has had a consistent policy of failing to provide  
16 Plaintiff and members of the Terminated Sub-Class all wages due to them upon termination. Relying  
17 upon, and consistent with Defendant's standard policy, practice and procedure of classifying Plaintiff  
18 and each member of the Terminated Sub-Class as exempt employees, Defendant failed and refused  
19 to compensate Plaintiff and members of the Terminated Sub-Class for overtime, and missed meal and  
20 rest breaks at the time their employment was terminated.

21       18. During the Class Period, defendants required Plaintiff and members of the Plaintiff  
22 Class to work overtime without lawful compensation, and without proper meal and rest breaks.  
23 Defendants, in violation of the above-described Wage Orders and statutes, willfully failed and refused  
24 to pay Plaintiff and members of the Plaintiff Class overtime compensation, failed to provide them, or  
25 to compensate them for meal and rest periods, failed to pay all wages due upon termination, and failed  
26 to provide true and accurate wage statements. Said policies, procedures, and practices are in violation  
27 of the California *Labor Code*, including, but not limited to, *Labor Code* §§ 201-203.

28

## **CLASS ACTION ALLEGATIONS**

2       19. Plaintiff brings this action on behalf of himself and all others similarly situated as a  
3 class action, pursuant to California *Code of Civil Procedure* section 382. The class which Plaintiff  
4 seeks to represent is composed of, and defined as follows:

**Plaintiff Class:**

6 All persons employed by defendant during the Class Period as "Store  
7 Managers" or "General Managers" and similar positions, at any of  
8 Defendants' full line retail stores:

**Sub-Class No. 1:**

10 All members of the Plaintiff Class whose employment ended during the  
11 Class Period.

12       20. The Class period is designated as the period from December 7, 2006, through and  
13 including the date judgment is rendered in this matter, and includes anyone employed by Defendants  
14 in the State of California during that period meeting the class definition.

15       21. The Class is so numerous that the individual joinder of all members is impracticable.  
16 While the exact number and identification of Class Members are unknown to plaintiff at this time and  
17 can only be ascertained through appropriate discovery directed to Defendants, Plaintiff is informed and  
18 believes that the Class includes hundreds, and possibly thousands of members.

19       22. Common questions of law and fact exist as to all members of the Class which  
20 predominate over any questions affecting only individual members of the Class. These common legal  
21 and factual questions, which do not vary from class member to class member, and which may be  
22 determined without reference to the individual circumstances of any class member, include, but are  
23 not limited to, the following:

- 1                   c. Whether Plaintiff and members of the Plaintiff Class are entitled to overtime  
2                   compensation;
- 3                   d. Whether Defendants failed to pay overtime compensation to plaintiff and  
4                   members of the Plaintiff Class;
- 5                   e. Whether Defendant's policy and practice of classifying Plaintiff and members  
6                   of the Plaintiff Class as exempt, and failing to provide them overtime  
7                   compensation violated provisions of California's wage and hour laws;
- 8                   f. Whether Plaintiff and members of the Plaintiff Class are entitled to meal and  
9                   rest periods;
- 10                  g. Whether Defendants failed to provide and/or compensate plaintiff and members  
11                  of the Plaintiff Class for meal and rest periods;
- 12                  h. Whether Defendant's policy and practice of not providing Plaintiff and  
13                  members of the Plaintiff Class meal and rest periods violated provisions of  
14                  California's wage and hour laws;
- 15                  i. Whether Defendants unlawfully and/or willfully failed to promptly pay  
16                  compensation owing to plaintiff and members of the Terminated Sub-Class  
17                  upon termination of their employment, in violation of *Labor Code* §§ 201-203;
- 18                  j. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and  
19                  members of the Plaintiff Class with true and proper wage statements upon  
20                  payment of wages, in violation of *Labor Code* section 226;
- 21                  k. Whether Plaintiff and members of the Plaintiff Class sustained damages, and  
22                  if so, the proper measure of such damages, as well as interest, penalties, costs,  
23                  attorneys' fees, and equitable relief; and
- 24                  l. Whether Defendants violated the Unfair Business Practices Act of California,  
25                  *Bus. & Prof. Code* § 17200, *et seq.*, by violating the above cited provisions, and  
26                  treating plaintiff and members of the Plaintiff Class unfairly by failing to pay  
27                  them overtime, failing to provide them meal and rest periods, failing to pay  
28

them wages due upon termination, and failing to provide true and accurate wage statements.

3       23. The claims of the named Plaintiff are typical of the claims of the members of the  
4 proposed class. Plaintiff and other class members sustained losses, injuries and damages arising out  
5 Defendants' common policies, practices, procedures, protocols, routines, and rules which were applied  
6 to other Class Members as well as plaintiff. Plaintiff seeks recovery for the same type of losses,  
7 injuries, and damages as were suffered by other members of the proposed class.

8       24. Plaintiff is an adequate representative of the Class because he is a member of the Class  
9 and his interests do not conflict with the interest of the members he seeks to represent. Plaintiff has  
10 retained counsel competent experienced in prosecution of complex class actions, and together Plaintiff  
11 and his counsel intend to prosecute this action vigorously for the benefit of the Class. The interests  
12 of the Class members will fairly and adequately be protected by plaintiff and his attorneys.

13        25. A class action is superior to other available methods for the fair and efficient  
14 adjudication of this litigation since individual litigation of the claims of all Class members is  
15 impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an  
16 individual basis, because this would result in hundreds, and potentially thousands of individual,  
17 repetitive lawsuits. Individual litigation presents the potential for inconsistent or contradictory  
18 judgments, and the prospect of a "race to the courthouse," and an inequitable allocation of recovery  
19 among those with equally meritorious claims. By contrast, the class action device presents far fewer  
20 management difficulties and provides the benefit of a single adjudication, economics of scale, and  
21 comprehensive supervision by a single court.

22       26. The various claims asserted in this action are additionally or alternatively certifiable  
23 under the provisions of the California *Code of Civil Procedure* section 382 because:

24           a. The prosecution of separate actions by hundreds or thousands of individual  
25           class members would create a risk of varying adjudications with respect to  
26           individual class members, thus establishing incompatible standards of conduct  
27           for Defendants.

- 1                   b. The prosecution of separate actions by individual class members would also  
2                   create the risk of adjudications with respect to them that, as a practical matter,  
3                   would be dispositive of the interest of the other class members who are not a  
4                   party to such adjudications and would substantially impair or impede the ability  
5                   of such non-party class members to protect their interests.  
6                   c. Defendants have acted or refused to act on grounds applicable to the entire  
7                   Class, thereby making appropriate final declaratory and injunctive relief with  
8                   respect to the Class as a whole.

9                   **FIRST CAUSE OF ACTION**

10                  **(Failure to Pay Overtime Compensation)**

11                  **(By All Plaintiffs Against All Defendants)**

12                 27. Plaintiff incorporates herein by reference the allegations set forth above in paragraphs  
13                 1 through 26.

14                 28. Pursuant to California *Labor Code* § 1194 and the applicable Industrial Welfare  
15                 Commission ("IWC") Wage Order, it is unlawful to employ persons without compensating them at  
16                 a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the  
17                 number of hours worked by the person on a daily or weekly basis.

18                 29. Pursuant to California *Labor Code* § 1198, the maximum hours of work and the  
19                 standard conditions of labor fixed by the commission shall be the maximum hours of work and the  
20                 standard conditions of labor for employees. The employment of any employee for longer hours than  
21                 those fixed by the order or under conditions of labor prohibited by the order is unlawful.

22                 30. Pursuant to the applicable IWC Wage Order, Defendants are and were required to pay  
23                 Plaintiff and the other class members at the rate of time-and-one-half for all hours worked in excess  
24                 of eight (8) hours in a day or more than forty (40) hours in a workweek.

25                 31. The applicable IWC Wage Order further provides that Defendants are and were  
26                 required to pay Plaintiff and the other class members overtime compensation at a rate of two times her  
27                 regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

28

1       32. Pursuant to California *Labor Code* § 510, any work in excess of eight hours in one  
2 workday and any work in excess of 40 hours in any one workweek and the first eight hours worked  
3 on the seventh day of work in any one workweek shall be compensated at the rate of no less than one  
4 and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day  
5 shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In  
6 addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated  
7 at the rate of no less than twice the regular rate of pay of an employee.

8       33. Pursuant to California *Labor Code* § 510, Plaintiff and the other class members are  
9 entitled to overtime compensation at one-and-one-half times the regular hourly rate for hours worked  
10 in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked  
11 on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours  
12 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh  
13 day of work.

14       34. During the relevant time period, Plaintiff and the other class members regularly and/or  
15 consistently worked in excess of eight (8) hours in a day.

16       35. During the relevant time period, Plaintiff and the other class members regularly and/or  
17 consistently worked in excess of twelve (12) hours in a day.

18       36. During the relevant time period, Plaintiff and the other class members regularly and/or  
19 consistently worked in excess of forty (40) hours in a week.

20       37. Plaintiff and each member of the Plaintiff Class are entitled to overtime compensation  
21 for all hours worked in excess of the hours and time specified in the Wage Orders, statutes and  
22 regulations identified above.

23       38. Defendants committed the acts alleged herein knowingly and willfully, with the  
24 wrongful and deliberate intention of injuring plaintiff and the Plaintiff Class, with improper motives  
25 amounting to malice, and in conscious disregard of the rights of plaintiff and the Plaintiff Class.  
26 Plaintiff and the Plaintiff Class are thus entitled to recover nominal, actual, compensatory, punitive,  
27 and exemplary damages in amounts according to proof at the time of trial, but in excess of the  
28 minimum jurisdiction of this Court.

1       39. Defendants' conduct described herein violates the California *Code of Regulations*, Title  
2 8, § 11070, and *Labor Code* §§ 200, 203, 226, 226.7, 512, and 1194. Plaintiff and members of the  
3 Plaintiff Class are thus entitled to recover, in addition to the unpaid balance of overtime compensation  
4 defendants owe them, interest, penalties, attorneys' fees, expenses and costs of suit.—Plaintiff and  
5 members of the Plaintiff Class assert a claim for penalties pursuant to *Labor Code* §§ 201, 202, 203,  
6 204, 210, 225.5, 223, 226, 226.3, 226, 226.3, 226.7, 227.3, 510, 512, 1194, and 1194.2.

## **SECOND CAUSE OF ACTION**

## **(Failure to Allow and Pay for Meal and Rest Breaks)**

**(By All Plaintiffs Against All Defendants)**

10 40. Plaintiff incorporates herein by reference the allegations set forth above in paragraphs  
11 1 through 39.

12       41. At all times herein mentioned, the Industrial Welfare Commission Order and California  
13 *Labor Code* §§ 226.7 and 512(a) were applicable to Plaintiff's and the other class members'  
14 employment by Defendants.

15        42. Pursuant to California *Labor Code* § 512(a), an employer may not employ an employee  
16 for a work period of more than five hours per day without providing the employee with a meal period  
17 of not less than 30 minutes, except that if the total work period per day of the employee is no more  
18 than six hours, the meal period may be waived by mutual consent of both the employer and employee.

19       43.     *Labor Code* § 226.7(a) provides, “no employer shall require any employee to work  
20 during any meal or rest period mandated by an applicable order of the Industrial Welfare  
21 Commission.”

22       44. As alleged herein, Defendants routinely interrupted and/or failed to permit, authorize  
23 and/or provide Plaintiff's and Class members' meal breaks. By these actions, Defendants violated  
24 California *Labor Code* § 226.7(a) and § 512(a), in the number, length and manner of the breaks  
25 mandated by statute and regulation. At no time did plaintiff or members of the Plaintiff Class  
26 expressly or impliedly waive their right to meal and rest breaks.

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1       45. As a result of the unlawful acts of Defendants, Plaintiff and members of the Plaintiff  
2 Class have been deprived of meal and rest breaks, and are entitled to recovery under *Labor Code*  
3 § 226.7(a) in an amount of one additional hour of pay at the employee's regular rate of compensation  
4 for each work day that a meal and/or rest period was not provided.—Additionally, Plaintiff and  
5 members of the Plaintiff Class are entitled to penalties under the *Labor Code* sections identified  
6 above.

## **THIRD CAUSE OF ACTION**

**(Failure to Pay Compensation at the Time of Termination)**

**(By Plaintiff and Members of the Terminated Sub-Class Against All Defendants)**

10 46. Plaintiff incorporates herein by reference the allegations set forth above in paragraphs  
11 1 through 45

12       47. California *Labor Code* § 201 requires an employer who discharges an employee to pay  
13 compensation due and owing to said employee immediately upon discharge. California *Labor Code*  
14 § 202 requires an employer to promptly pay compensation due and owing to an employee within no  
15 more than 72 hours of that employee's termination of employment by resignation, and at the time of  
16 termination if an employee is involuntarily terminated. California *Labor Code* section 203 provides  
17 that if an employer wilfully fails to pay compensation promptly upon discharge or resignation in a  
18 prompt and timely manner as required by *Labor Code* §§ 201 and 202, respectively, said employer is  
19 liable to said employee for a waiting time wage continuation as described herein.

20       48. Defendants' willful failure to pay plaintiff and members of the Terminated Sub-Class  
21 all the wages due to them upon termination is in violation of *Labor Code* §§ 201 and 203, which  
22 provide that an employee's wages continue accruing up to thirty days from the time said wages became  
23 due. Therefore, plaintiff and members of the Terminated Sub-Class are entitled to a waiting time wage  
24 continuation penalty pursuant to *Labor Code* § 203.

25 // /

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27 VIII

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## **FOURTH CAUSE OF ACTION**

### **(Failure to Provide Accurate Wage Statements)**

**(By All Plaintiffs Against All Defendants)**

4 49. Plaintiff incorporates herein by reference the allegations set forth above in paragraphs  
5 1 through 48.

6       50. *Labor Code* §226(a) sets forth reporting requirements for employers when they pay  
7 wages, as follows: "Every employer shall . . . at the time of each payment of wages, furnish his or her  
8 employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours  
9 worked by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate  
10 if the employee is paid on a piece-rate basis. . . ." Section (e) provides: "An employee suffering injury  
11 as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall  
12 be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period  
13 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a  
14 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4000), and shall  
15 be entitled to an award of costs and reasonable attorney's fees."

16 51. Defendants failed to accurately record the overtime hours worked by plaintiff and  
17 members of the Plaintiff Class.

18       52. Plaintiff and members of the Plaintiff Class request recovery of *Labor Code* § 226(e)  
19 penalties according to proof, as well as interest, attorney's fees and costs pursuant to *Labor Code*  
20 §226(e), in a sum as provided by the *Labor Code* and/or other statutes.

## **FIFTH CAUSE OF ACTION**

**(Unfair Competition: California *Business and Professions Code* § 17200 etc.)**

**(By All Plaintiff, on Behalf of Herself, the Plaintiff Class, and the  
General Public, Against All Defendants)**

25           53. Plaintiff incorporates herein by reference the allegations set forth above in paragraphs  
26 1 through 52.

27       54. Section 17200 of the California *Business and Professions Code* prohibits any unlawful,  
28 unfair or fraudulent business act or practice. A violation of *California Business & Professions Code*

1        §§ 17200 *et seq.* may be predicated on the violation of any state or federal law. As described herein,  
2 Defendants violated *California Labor Code* §§ 201, 204, 212, 213, 226(a), 226.7, 510, 1174(d), 1198,  
3 2800, and 2802.

4        55. Plaintiff brings this cause of action in a representative capacity on behalf of the general  
5 public and the persons affected by the unlawful and unfair conduct described hereafter. Plaintiff and  
6 members of the proposed class have suffered and continue to suffer injury in fact and monetary  
7 damages as a result of defendants' actions.

8        56. The actions by defendants, including, but not limited to, the continuing failure to pay  
9 overtime, failure to provide meal and rest periods, failure to provide itemized wage statements, and  
10 failure to pay wages due upon termination, amount to conduct which is unlawful and a violation of law  
11 as alleged herein. As such, said conduct amounts to unfair business practices in violation of *Business*  
12 *and Professions Code* § 17200 *et. seq.*

13        57. Defendants' conduct as herein alleged has damaged plaintiffs and the members of the  
14 Plaintiff Class by denying them wages due and payable, and failing to provide proper wage statements.  
15 Defendants' actions are thus substantially injurious to Plaintiff and the members of the Plaintiff Class,  
16 causing them injury in fact and loss of money.

17        58. As a result of such conduct, defendants have unlawfully and unfairly obtained monies  
18 due to the plaintiff and the members of the Plaintiff Class.

19        59. All members of the Plaintiff Class can be identified by reference to payroll and related  
20 records in the possession of the defendants. The amount of wages due plaintiff and members of the  
21 Plaintiff Class can be readily determined from defendants' records. The members of the proposed  
22 class are entitled to restitution of monies due and obtained by defendants during the Class Period as  
23 a result of defendants' unlawful and unfair conduct.

24        60. Beginning at a date unknown to Plaintiff, but at least as early as December 7, 2006,  
25 defendants committed, and continue to commit acts of unfair competition as defined by § 17200 *et. seq.*  
26 of the *Business and Professions Code*, by and among other things, engaging in the acts and  
27 practices described above.

28

1       61. Defendants' course of conduct, acts, and practices in violation of the California law as  
2 mentioned in each paragraph above constitutes a separate and independent violation of §17200 etc.  
3 of the *Business and Professions Code*.

4 62. The harm to Plaintiff and the members of the Plaintiff Class of being wrongfully denied  
5 lawfully earned and unpaid wages outweighs the utility, if any, of defendants' policies and practices  
6 and, therefore, defendants' actions described herein constitute an unfair business practice or act within  
7 the meaning of *Business and Professions Code* § 17200.

8       63. Defendants' conduct described herein threatens an incipient violation of California's  
9 wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly  
10 threatens or harms competition.

11       64. Defendants' course of conduct described herein further violates *Business and*  
12 *Professions Code 17200* in that it is fraudulent, illegal, improper, and unfair.

13       65. The unlawful, unfair, and fraudulent business practices and acts of defendants, and each  
14 of them, as described herein above have injured Plaintiff and members of the Plaintiff Class in that  
15 they were wrongfully denied the timely and full payment of wages due to them.

## **PRAYER FOR RELIEF**

17 WHEREFORE, plaintiff, on behalf of himself, and on behalf of the members of the Plaintiff  
18 Class, prays for judgment against defendants as follows:

- 19       1. For nominal damages;

20       2. For compensatory damages;

21       3. For equitable relief in the nature of declaratory relief, restitution of all monies due to

22              Plaintiff and members of the Plaintiff Class, disgorgement of profits from the unlawful

23              business practices of defendants, and accounting;

24       4. For penalties permitted by *Labor Code* §§ 201, 202, 203, 204, 210, 225.5, 223, 226,

25              226.3, 226, 226.3, 226.7, 227.3, 510, 512, 1194, and 1194.2;

26       5. For interest accrued to date;

27       6. For costs of suit and expenses incurred herein pursuant to *Labor Code* §§ 226 and

28              1194;

- 1       7. For reasonable attorney's fees pursuant to *Labor Code* §§ 226 and 1194; and  
2       8. For all such other and further relief that the Court may deem just and proper.  
3

4 DATED: March 9, 2011

MARLIN & SALTZMAN, LLP  
UNITED EMPLOYEES LAW GROUP, PC

6 By:

7 Kiley L. Grumbacher, Esq. of Marlin & Saltzman  
8 Attorneys for Plaintiff  
9

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff requests a trial by jury on all applicable claims.

12 DATED: March 9, 2011

MARLIN & SALTZMAN, LLP  
UNITED EMPLOYEES LAW GROUP, PC

15 By:

16 Kiley L. Grumbacher, Esq. of Marlin & Saltzman  
17 Attorneys for Plaintiff  
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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA  
Gary M. Blair, Executive officer

Number: 411071 03-14-11 3:03 pm  
Marlin & Saltzman  
Anacapa Check  
10904

G 1379818  
Ramon Perez  
VS.  
Sears Roebuck and Co et al

CV-Complaint 25K+	395.00
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File Total:	395.00
MJAY	Total Paid:
	395.00

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3/31/11 1-48

<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA</p> <p>STREET ADDRESS: 1100 Anacapa Street MAILING ADDRESS: CITY AND ZIP CODE: Santa Barbara, California 93101 BRANCH NAME: Santa Barbara-Anacapa Division</p>		<p>FOR COURT USE ONLY</p> <p><b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY of SANTA BARBARA</p> <p>MAR 28 2011</p> <p>GARY M. BLAIR, Executive Officer BY <i>April Garcia</i> APRIL GARCIA, Deputy Clerk</p>
<p>Caption:</p> <p>Ramon Perez vs Sears Roebuck and Co et al <i>DA</i></p>		<p>CASE NUMBER:</p> <p>1379818</p>
<p>ORDER &amp; NOTICE OF CASE ASSIGNMENT NOTICE OF CASE MANAGEMENT CONFERENCE</p>		

The above case is hereby assigned to Judge Denise de Bellefeuille for ALL purposes, including trial. All future matters, including ex parte matters, are to be scheduled with the assigned judge. Counsel shall include the name of the assigned judge in the caption of every document filed with the court. The above-entitled case is hereby ordered set for:

CASE MANAGEMENT CONFERENCE on 7/14/11  
at 8:30 am in Dept. SB6 at the court address above.

PLAINTIFF SHALL GIVE NOTICE of this assignment to ALL parties brought into the case, including but not limited to defendants, cross-defendants and intervenors. A Proof of Service of this ORDER & NOTICE OF CASE ASSIGNMENT is to be filed with the Court within five (5) working days after service. Failure to give notice and file proof thereof or failure to appear may result in the imposition of sanctions. Pursuant to California Rule of Court 3.725, no later than fifteen (15) calendar days before the date set for the Case Management Conference, each party must file a Case Management Statement (Judicial Council form GM110). In lieu of each party filing a separate Case Management Statement, any two or more parties may file a joint statement.

At the Court's discretion counsel, parties and insurance representatives (if any) with full settlement authority may be required to attend a CADRe Information Meeting within ten (10) days of the Conference date.

Dated: 03/28/11

*B. E. Hill*  
JUDGE OF THE SUPERIOR COURT  
BRIAN E. HILL

**CLERK'S CERTIFICATE OF MAILING**

I certify that I am not a party of this action and that a true copy of the foregoing was mailed first class, postage prepaid in a sealed envelope addressed as shown, and that the mailing of the foregoing and execution of this certificate occurred at Santa Barbara, California, on 03/28/11

Stanley D Bradley  
Marlin & Saltzman  
29229 Canwood St Ste 208  
Agoura Hills, CA 91301

Gary M. Blair, Executive Officer

By *April Garcia*, Deputy